IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3546 OF 1995

State Bank of India ...Plaintiffs

vs.

Viren Pravin Sanghvi
Sole Prop of
M/s.Exim Link ...Defendant

Mr.O.Mohandas i/b Little & Co. for the Plaintiffs

CORAM: A.S.OKA,J.
DATE : OCTOBER 22,2007

JUDGMENT:

1. On the basis of the order dated 25th April 2005, the suit was listed under the caption of 'Undefended suits for Exparte decree'.

2. The plaintiffs have filed this suit against the defendant for recovery of a sum of Rs.5,75,327/- as per the particulars of claim in Exh.D together with interest on the principal amount as prayed in prayer clause (a).

3. The plaintiffs have filed a suit for refund of amount wrongfully claimed by the defendant and paid by the plaintiffs to the defendant as premium on Exim Scrips/REP Licences under the scheme by Reserve Bank of India in the year 1992.

4. According to the plaintiffs the said scheme formulated by

the Reserve Bank of India, the plaintiffs-bank was directed to purchase the Exim Scrips/REP Licences at a premium of 20% of the face value thereof from the holders who wish to dispose of them. According to the plaintiffs, the premium amount was to be paid to the holders of Scrips/Licence. The Exims Scrips/Licence are in the nature of licences to import goods. Same are issued by the Government of India to the persons against export effected by the said persons.

5. according to the case of the plaintiffs, the allottee of Exim Scrips/REP is entitled to effect import upto the amount specified thereunder on the terms and conditions incorporated therein. The Exim Scrips/REP are negotiable and freely transferable in their full face value or even for any unutilised part thereof. Under the said scheme formulated by the Reserve Bank of India, the allottee of the Exim Scrips/REP licence or their subsequent transferee could surrender the Exim Scrips/REP to the plaintiffs so as to entitle them to claim 20% premium of face value or unutilised face value as more particularly set out in the notification issued by the Reserve Bank of India. According to the case of the plaintiffs only the Scrips/Licences issued against exports to General Currency Areas were within the purview of the notification issued by the Reserve Bank of India. According to the plaintiffs the Exim Scrips/REP Licences issued against exports to Rupee Payment Areas countries were not eligible for

grant of premium on its surrender.

6. The defendant sometime in June 1992 tendered to the plaintiffs Exim Scrips No.3518113 under bank reference No.020558 for a value of Rs.2,66,000/- for encashment. According to the case of the plaintiffs, the defendant represented that the Exim Scrips were covered by the said scheme and therefore the defendant was entitled to premium in the sum of Rs.53,200/-. Relying upon the said representation, the plaintiffs paid a sum of Rs.53,200/- to the defendant.

7. Similarly, another Exim Scrips/REP dated 9th January 1992 for the value of Rs.2,40,000/- was surrendered by the defendant to the plaintiffs for encashment. Again relying upon the representation made by the defendant, a sum of Rs.48,000/- was paid by the plaintiffs by way of premium.

8. Subsequently, the defendant tendered another Exim Scrips/REP dated 16th January 1992 for the value of Rs.9,39,000/- for encashment. Representation was made regarding entitlement of the defendant to receive the premium under the policy of the Reserve Bank of India. Relying upon the representation, the plaintiffs have paid a sum of Rs.1,87,800/- towards premium to the defendant.

9. According to the plaintiffs in July 1992 they came to know

that the defendant was not entitled to premium on the said three Exim Scrips which were pertaining to Rupee Payment Areas. The plaintiffs, therefore, by their letter dated 20th July 1992 and 12th August 1992 addressed to the defendant called upon him to refund the premium amount on the said three Exim Scrips aggregating to Rs.2,89,000/-. A telegram was also sent to the defendant calling upon him to pay the amount. The letters as well as telegram returned unserved. The letters were issued to the defendant at the address of the defendant available on record of the plaintiffs-bank. The plaintiffs-bank also filed F.I.R. on the basis of which investigation was commenced by the Police Authorities.

10. According to the case of the plaintiffs, the issuing authority of the Exim Scrips/REP informed the plaintiffs that the defendant was not entitled to receive premium on the Scrips as the Scrips were pertaining to Rupee Payment Areas. The plaintiffs have referred to and relied upon the letters of the issuing authorities to that effect.

11. Therefore, by a letter dated 26th February 1993 the plaintiffs called upon the defendant to repay the amounts paid towards premium. A telegram was also sent to the defendant calling upon him to pay the amount. As the amount was not repaid, the present suit has been filed for recovery of the total premium amounting to Rs.2,89,000/- with interest at the

rate of 23,50% p.a. on the said amount till the institution of the suit.

12. The plaintiffs have filed an Affidavit dated 11th October 2007 of Mr.Keshava V. Bhat, Assistant General Manager of the plaintiffs. In paragraph 7 of the said Affidavit, it is stated thus :

"7. I say the Plaintiff has irrecoverably lost/misplaced the copies of the Exim Scrips, the defendants Application, the plaintiffs letters to the issuing Authority and the Letters from the Assistant Chief Controller of Import and Exports to the Plaintiffs as annexed to the Exhibit 'A' to 'N' respectively to the plaint.

13. In view of the statements of the said statements of the witness, true copies of the original documents tendered by the plaintiffs are taken on record. The plaintiffs have also filed an Affidavit of Mr.Vijay R. Hingorani, Assistant General Manager of the plaintiffs for proving the claim of the plaintiffs in the suit.

14. In view of the communications issued by the office of Deputy Chief Controller of Imports and Exports, it has been established that the defendant was not entitled to premium on the Scrips in question as the said Scrips related to Rupee

Payment Areas. In view of the affidavit of Mr.Vijay Hingorani and the documents which are produced on record, the plaintiffs have proved that the defendant was not entitled to claim the premium of 20% on the said three Scrips. Thus, the plaintiffs have established their claim for the amount as well as interest till the date of institution of the suit. The plaintiffs have prayed for further interest at the rate of 25% p.a. Considering the nature of the transaction and facts and circumstances of the case, further interest deserves to be granted at the rate of 6% p.a.

15. Hence the suit is decreed in terms of prayer clauses (a) and (b) subject to modification that further interest will be payable on the principal amount of Rs.2,89,000/- at the rate of 6% p.a. from the date of institution of the suit till payment or realization.

16. The plaintiffs will be entitled to refund of court fees, if any, as per the rules. Certified copy is expedited.

JUDGE